

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**JUANA HERNANDEZ, AS
ADMINISTRATRIX OF THE
ESTATE OF DANNY NICACIO
and ARMANDO MAISONET,
Plaintiffs**

v.

**SCOTTSDALE INSURANCE
COMPANY and UTICA
MUTUAL INSURANCE
COMPANY,
Defendants.**

CIVIL ACTION NO. 05-40141-FDS

**DEFENDANTS' JOINT MOTION TO DISMISS PURSUANT TO FED. R.
CIV. P. 12 (b)(6), OR TO STAY ACTION IF NOT DISMISSED IN ITS ENTIRETY**

The Defendants, Scottsdale Insurance Company ("Scottsdale") and Utica Mutual Insurance Company ("Utica") hereby move this Court to dismiss this action in its entirety pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that (1) Plaintiffs are not insureds under Defendants' policies, and therefore, do not have standing to seek declaratory relief as to the coverage available under Scottsdale and Utica's policies; and (2) even assuming, *arguendo*, that Plaintiffs had standing to bring this action, they have nevertheless failed to state a claim upon which relief can be granted because the claims in the Underlying Actions are not, as a matter of law, covered under the Scottsdale and Utica policies.

If this Court does not dismiss this lawsuit in its entirety, Defendants respectfully request that the Court stay this case until the resolution of the Underlying Actions.

In further support of this Motion, the Defendants rely upon their Memorandum in Support of this Motion, and accompanying affidavits, filed herewith.

Respectfully submitted,

Scottsdale Insurance Company,
By Its Attorneys,

Utica Mutual Insurance Company,
By Its Attorney,

/s/ Caryn L. Daum
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(617) 557-9696

Dated: September 6, 2005

CERTIFICATE OF SERVICE

I, Caryn L. Daum, hereby certify that a true and accurate copy of the foregoing document was served by first-class mail, postage prepaid, on this 6th day of September, 2005, upon:

Robert H. Beadel, Esquire
Law Office of Hector E.
Pineiro
807 Main Street
Worcester, MA 01610

/s/ Caryn L. Daum
Caryn L. Daum